



2002 Report to the Legislature

Trans Boundary Water

**Feasibility of Conducting Negotiations with Other States
and Canada on Water Bodies Shared with Washington**

July 2003

Publication No. 03-11-009

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2002 Report to the Legislature

Trans Boundary Water

**Feasibility of Conducting Negotiations with Other States
and Canada on Water Bodies Shared with Washington**

**Prepared by
George Schlender
Department of Ecology
Water Resources Program
Eastern Regional Office**

July 2003

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Appendix 6:

Cross State Water Agreements, Interstate Compacts, and Transboundary Agreements of the Western United States (19 pages)

Appendix 7:

Coordination Mechanisms for the Control of Interstate Water Resources: A Synthesis and Review of the Literature (36 pages)

Part 1 - Executive Summary

Introduction

This report is required by the Legislature under Engrossed Substitute Senate Bill 6387 which states that “the Governor, or the Governor’s designee, shall consult with the states that share water bodies with the state of Washington, with Canada, and with other states that conducted similar negotiations, regarding issues and strategies in those negotiations and shall report to the standing committees of the legislature having jurisdiction over water resources by January 1, 2003.

“In conducting the consultation under subsection (c), the governor shall give priority consideration to interstate issues affecting the Spokane-Rathdrum Prairie aquifer including those issues affecting a safe and adequate supply of public drinking water, as provided by municipal governments.”

The governor’s designee, Department of Ecology Director Tom Fitzsimmons was charged with providing the report. The bulk of the work was delegated to Ecology’s Eastern Regional Office located in Spokane.

Agreements with other states that share water with Washington

There are two signed agreements between the states of Idaho and Oregon. Each agreement is fairly limited in scope and represents cooperative efforts to share information or implement an adjudication decree:

- **Pullman-Moscow Aquifer** – This agreement is between the Idaho Department of Water Resources and Washington Department of Ecology regarding the coordinated management of the Pullman-Moscow subterranean aquifer.
- **Regulation of water rights between Washington and Oregon in the Walla Walla Basin – Washington** has signed a memorandum of agreement with Oregon regarding the delivery of water from Oregon to Washington in the Walla Walla Basin.

Consultation with Idaho on the Spokane-Rathdrum Prairie Aquifer

In April 2002, a meeting was held with Karl Dreyer, Director of the Idaho Department of Water Resources (IDWR), Bob Haynes, Regional Manager of the Idaho Department of Environmental Quality, other Idaho state staff and Washington Department of Ecology senior staff to discuss aquifer management options. The group determined that technical information was needed about the aquifer, especially from Idaho. At least three other formal meetings were scheduled after April to discuss each state’s requirements, technical information, aquifer data and to delineate roles and responsibilities. Lead contacts from each state were also selected. They are:

- Hal Anderson – Administrator, Planning and Technical Services, IDWR
- George Schlender – Section Manager, Ecology, Water Resources Program

A workgroup of stakeholders and agency staff from both states conducted a public workshop about the Spokane-Rathdrum Prairie Aquifer on June 20, 2002. The workshop was well attended by the public and local and state agencies. The need for a comprehensive bi-state aquifer study was a primary outcome from the workshop. An interim steering committee was established to guide and provide input into the study process and funding management options and structure.

The interim steering committee is made of stakeholders, state agencies, and local government from both states and elected officials. This group has provided guidance on aquifer study structure and the process for public participation. Environmental stakeholder groups have been very active on aquifer issues and participate in the bi-state aquifer interim steering committee.

Washington has not issued new water rights within the Spokane Rathdrum Prairie Aquifer for almost 10 years. Watershed planning under RCW 90.82 has been active in the Middle and Little Spokane Watersheds (which includes the aquifer) since 1998. Ecology is waiting on the outcome of the planning process to guide its processing of water right applications in Washington. In Idaho, a moratorium on new water withdrawals was requested by environmental groups. Public hearings were held in September 2002 and were heavily attended by the public.

The Idaho Department of Water Resources concluded it had insufficient information on the technical aspects of the aquifer to issue a moratorium. However, the state did agree to create a “groundwater management area” and has appointed a committee to review new water right applications on a case by case basis. This committee is made up of stakeholders from the environmental groups, local government and agency staff.

The current status regarding discussions about the Spokane-Rathdrum Prairie Aquifer study is:

- Federal funding of the aquifer study is stalled but recent congressional activity may allow funding in 2003.
- If federal monies become available, Washington and Idaho may need to supply matching funds up to \$80,000 each as well as staff work and other “in-kind” contributions toward the first phase of the \$3.5 million aquifer study.
- Water resources policy staff in both Idaho and Washington will continue to meet to talk about organization structure of the study and review actions to date.
- The joint chambers of commerce of the cities of Coeur d’ Alene, Idaho, and Spokane, Washington, are trying to set up a meeting with local legislators from both states and the directors of Idaho Department of Water Resources and Ecology to discuss aquifer issues, details of the study and funding needs. This meeting is expected to occur during the break in the respective states’ legislative sessions.

Agreements with Canada

Washington has three signed agreements with Canada regarding management and cooperation of shared water bodies:

Lake Roosevelt-Columbia River and Tributary Systems which delineates cooperation and coordination on water quality discharges and large consumptive use withdrawals above 10 cubic feet per second on the Columbia River or tributary systems to the Columbia River that affect both Washington and Canada. Most of this agreement is focused on waste discharges in Canada and not water allocation. However, consultation was initiated in July 2002 surrounding the Cascade Power Project on the Kettle River in Canada. Agency staff from Washington and Canada inspected the proposed hydro-power site and discussed water policy issues and implications. The Cascade Power Project is a river power plant, non-consumptive and should not come under the agreement. Canada decided to consult with Washington anyway due to cross border water issues.

Abbotsford-Sumas Aquifer agreement which was signed in October 1996 concerning the referral of water right applications within the Abbotsford-Sumas aquifer. Very little action concerning the allocation of water has happened since the agreement was signed. Most of the activity has focused on water quality issues through the Abbotsford-Sumas Aquifer International Task Force, particularly controlling the levels of nitrates in the aquifer.

The International Osoyoos Lake Board of Control which is comprised of individuals appointed from Canada and Washington to implement the orders from of the International Joint Commission (Canada and United States) regarding the alteration and operation of Zosel Dam which controls the water levels in Osoyoos Lake. Zosel Dam has been replaced by a new structure owned by the state of Washington and operated under contract by the Oroville-Tonasket Irrigation District. The board meets on an annual basis and reports back to the Joint Commission every year to assure that daily lake levels and flows are kept to assure compliance with the orders from the Commission.

A review of other states trans-boundary water agreements

Ecology conducted a review of interstate agreements through literature research, Internet research, proceedings from a recent Gonzaga University Law School seminar on aquifer law and a recently published book by the American Society of Civil Engineers on water agreements.

There are four established approaches for interstate water allocations:

1. Suits for equitable apportionment,
2. Interstate compacts and
3. Congressional allocation
4. Cooperative agreements

The most common interstate agreement that exists in the United States West of the Mississippi River is the compact agreement. There are 22 interstate compacts containing a specific water allocation formula west of the Mississippi. Ecology's review of Western states water agreements indicated several cooperative agreements that have processed between states outside a formal interstate compact. The cooperative agreement may be a very viable option but requires a good faith effort from participating states to uphold it in lieu of a binding Congressional compact.

The process for negotiation and approval of interstate compacts follows a five step process:

1. Congress authorizes the states to negotiate a compact.
2. State legislatures appoint commissioners.
3. Commissioners meet, usually aided by a federal chairman, to negotiate and sign the agreement.
4. State legislatures then ratifies the compact.
5. Finally, the U.S. Congress ratifies the compact.

Recommendations

The following recommendations are made as a result of review of agreements in other states and consultation with the state of Idaho on the Spokane-Rathdrum Prairie Aquifer:

- There does not appear to be a need at this time to negotiate any additional agreements with bordering states and Canada on allocation of trans-boundary waters. Preliminary discussions will take place regarding renewal of the operating order (due to expire in 2012) through the Joint Commission on Lake Osoyoos. Current administrative agreements between bordering states and Canada are working and mostly provide coordination and sharing of information.
- An interstate agreement on the Spokane-Rathdrum Prairie Aquifer is premature at this time due to the need for a comprehensive study of the aquifer, especially the Idaho portion.
- Federal funding of the Spokane-Rathdrum Prairie Aquifer has been proposed by Congress and may become available in 2003. Washington will be expected to come up with matching money and in-kind services. Previous figures for the matching funds were estimated at \$80,000. Ecology will make a budget request to the legislature for the \$80,000 match for the comprehensive aquifer study.

Part 2 - Existing Agreements with Bordering States and Canada

Agreements with other States that share water with Washington

Washington has signed two water allocation agreements with its border states, Idaho and Oregon. Each agreement is fairly limited in scope and represents cooperative efforts rather than allocation of water between the two states. Both agreements do not limit the states from allocating water but merely share information on which decisions can be made.

Idaho

Pullman-Moscow Aquifer

There is only one signed agreement between Idaho and Washington. This agreement is with the Department of Ecology and Idaho Department of Water Resources on the coordinated management of the Pullman-Moscow aquifer. Signed in April 1992, the agreement outlines coordination measures between the two states and the Pullman-Moscow Water Resources Committee. The states share information about new requests for water rights within the zone of influence of the aquifer. Since Ecology has not processed any new water right applications within the zone of influence of the Pullman-Moscow aquifer area since the agreement was signed, no applications have been forwarded to the Committee. However, the aquifer Committee is active and has received grants to further study the aquifer and develop management recommendations. A copy of the agreement is shown in **Appendix 1**.

Oregon

Regulation of water rights between Washington and Oregon in the Walla Walla Basin

Washington has a memorandum of agreement with Oregon regarding the delivery of water from Oregon to Washington in the Walla Walla Basin. Watermasters in both states have agreed to work cooperatively to regulate water rights consistent with the federal adjudication decree in the Walla Walla Basin. This agreement is limited in scope to certain streams and water rights in order to carry out the requirements of the federal adjudication within the Walla Walla basin. There have been attempts to reach agreements with Oregon to protect instream flows within the Walla Walla basin but no new agreements have been initiated due to requirements in existing water code between the states. A pilot program to protect water between the states using trust water rights and leasing contracts currently is being reviewed. A copy of this agreement is included in **Appendix 2**.

Multi-state Agreements (not signed or ratified)

Columbia River Natural Resources Management Compact (Idaho, Montana, Oregon and Washington)

This compact is not yet in effect and current status is unknown. The compact has not been approved by Congress. This proposed compact sets up a "Columbia River Governance Commission" made of six members of each state's legislature.

The Spokane-Rathdrum Prairie Aquifer

Consultation with Idaho concerning the Spokane-Rathdrum Prairie Aquifer began in April 2002. The impetus to begin discussions on the aquifer occurred when Idaho received several water right applications for two power plants. A meeting was held with Karl Dreyer Director of the

Idaho Department of Water Resources (IDWR), Bob Haynes IDWR Regional Manager, Idaho Department of Environmental Quality staff and Ecology senior staff to discuss aquifer management options. A key outcome of the meeting was the need for technical information on the aquifer, especially in Idaho. Karl Dryer was very adamant that an interstate compact on the aquifer was premature and that he favored other possible management approaches.

At least three other formal meetings were scheduled after April to discuss each state's requirements, technical information, aquifer data sharing and delineate roles and responsibilities. Lead contacts within each state regarding aquifer policy were also selected. The states also discussed proposed organizational structures for comprehensive technical study of the aquifer based on experience with Treasure Valley in Idaho and the Snake River Plain.

A workgroup of stakeholders and agency staff from both states organized a facilitated public workshop on the Spokane-Rathdrum Prairie Aquifer on June 20, 2002. The workshop was well attended by the public and local and state agencies. Both Idaho and Washington provided technical and administrative presentations on the aquifer and water law at the workshop. Significant public input on policy and technical data needs concerning the aquifer was taken by the facilitation group and many volunteers. Congressional participation at the workshop through a phone link was provided by U.S. Sens. Larry Craig (Idaho) and Patty Murray (Washington). Both Senators displayed support for a comprehensive aquifer study and promised to try and obtain federal funding. A comprehensive bi-state aquifer study was a primary outcome from the workshop. An interim steering committee was established to guide and provide input into the study process. A copy of the agenda and proceedings from the June workshop is attached under **Appendix 3**.

The interim steering committee is made of stakeholders, state agencies, local government from both Idaho and Washington and elected officials. This group has provided guidance on aquifer study structure and the process for public participation.

The state of Washington has not issued new water rights within the Spokane Rathdrum Prairie Aquifer for almost 10 years. Watershed planning under RCW 90.82 has been active in the Middle and Little Spokane Watersheds (which includes the aquifer) since 1998. Ecology is awaiting the outcome of the planning process to guide its water right processing actions. In Idaho, a moratorium on new water withdrawals was requested by environmental groups of IDWR. Public hearings were held in September 2002 and heavily attended by the public. The outcome of the moratorium process in Idaho is a "groundwater management area." IDWR ruled that it had insufficient information on the technical aspects of the aquifer to issue a moratorium. The groundwater management area will screen new applications on a case by case basis through a policy committee made up of stakeholders and agency staff.

Current status of the discussions on the Spokane-Rathdrum Prairie Aquifer is:

- Federal funding of the aquifer study is stalled but recent congressional activity may allow it to be funded in 2003.
- Each state may need to supply matching funds for the \$550,000 first phase of the estimated \$3.5 million dollar study. Washington's share, together with in-kind match of

50 percent, is about \$160,000. Ecology may need to request legislative funding for approximately \$80,000 to match the state of Idaho to start the study.

- Water resources policy staff between Idaho and Washington will continue to meet to talk about organization structure of the study and review previous actions to date.
- The joint chambers of commerce of the cities of Coeur d' Alene, Idaho, and Spokane, Washington, are trying to set up a meeting between local bipartisan legislators and the directors of IDWR and Ecology to discuss aquifer issues and the details of the study and funding needs. This meeting is anticipated sometime during the break in each state's respective legislative sessions.

Agreements with Canada

The state of Washington has signed three agreements with Canada regarding management and cooperation about shared water bodies.

Lake Roosevelt / Columbia River and Tributary Systems

The first is an agreement signed in April 1996 with Kootenai Region of the Ministry of Lands and Parks regarding coordination on Lake Roosevelt and Columbia River issues. The agreement delineates cooperation and coordination on water quality discharges and large consumptive use withdrawals above 10 cubic feet per second (cfs) on the Columbia River or tributary systems that affect both Washington and Canada. While this agreement has provisions for sharing information on large water withdrawals between the two countries, the main focus has been on waste discharges flowing from Canada into the United States. In July 2002, this agreement was the basis to facilitate a meeting with British Columbia water officials in Grand Forks, B.C., on the Cascade Power Project on the Kettle River. The Cascade Project is a run of the river power plant and would be considered non-consumptive under Washington water law. While the 1996 agreement with the Kootenai Region specifies consumption use applications above 10 cfs on the Columbia or main tributaries, the meeting on the Cascade Power Project was appropriated due to stakeholder interest in Washington from the Kettle Watershed Planning unit. A copy of this agreement is included under **Appendix 4**.

Abbotsford-Sumas Aquifer

This agreement was signed in October 1996 concerning the referral of water right applications within the Abbotsford-Sumas aquifer. The agreement describes procedures for water allocations between the shared water body of the Abbotsford-Sumas aquifer in Canada and Sumas, Washington. There has been little activity on water rights applications since this agreement was signed. While the Abbotsford-Sumas Aquifer Task Force has been active, their work has primarily focused on water quality issues within the aquifer, especially nitrates. A copy of this agreement is included under **Appendix 5**.

The International Osoyoos Lake Board of Control

The board is comprised of individuals appointed from Canada and Washington to implement the orders from of the International Joint Commission (Canada and United States) relative to the alteration and operation Zosel Dam which controls the level of Osoyoos Lake. Zosel Dam has been replaced by a new structure owned by the state of Washington and operated under contract by the Oroville-Tonasket Irrigation District. The board meets on an annual basis and reports

back to the Joint Commission in April of each year to assure that daily lake levels and flows are kept to assure compliance with the orders from the Commission.

Part 3 – Review of Agreement and Compacts in other States

Review of other interstate trans-boundary water agreements

There are three established approaches for interstate water allocations:

1. Suits for equitable apportionment
2. Interstate compacts
3. Congressional allocation

It should be noted that in reviewing the agreements, there are other processes existing outside the federal process described above. These agreements were mainly cooperative instruments between states or involved formal councils between states. One local example is the Northwest Power Planning Council which operates in Washington within the Columbia Basin.

Ecology conducted a review of interstate agreements through literature research, Internet research, proceedings from a recent Gonzaga University Law School continuing legal education seminar on aquifer law and a recently published book by the American Society of Civil Engineers on water agreements. **Appendix 6** contains a summary of compacts and water agreements in the Western United States.

Review of research by Dr. Doug Kenney, University of Colorado School of Law

Dr. Kenney has authored several recent publications on interstate water agreements. He was a speaker at the Gonzaga University law conference held in Spokane in September 2002. Referenced in a paper presented at the “Law of the Aquifer” conference, Kenney said the most common interstate water agreement in states west of the Mississippi River is the compact agreement. There are 22 such interstate compacts containing a specific water allocation formula.

The process for negotiation and approval of interstate compacts follows a five step process:

1. Congress authorizes the states to negotiate a compact.
2. State legislatures appoint commissioners.
3. Commissioners meet, usually aided by a federal chairman, to negotiate and sign the agreement.
4. State legislatures ratify the compact.
5. Finally, the U.S. Congress ratifies the compact.

A key element in interstate water allocation is the mathematical formula used to apportion flows. In determining how to apportion water within the mathematical formula, sound science and data are extremely important to the development of an accepted formula.

Based on Kenney’s research, out of the 22 interstate compacts, only three reference groundwater. Most states sidestep the issue of ground and surface water interaction.

Key elements that can be derived from Dr. Kenney’s review of agreements as shown in **Appendix 7** are:

- Agreements need to consider the political viability in order to survive.
- Agreements should foster a regional perspective and comprehensively look at the watershed to be managed.
- Membership and participation in the process needs to balance federal and state interests in the region and address other stakeholder concerns in the watershed.
- There is a significant financial commitment to water negotiations that requires staffing and technical assistance to be successful.
- The track record of many agreements and organizations to manage water is generally poor – however, that should not discourage new innovation in the development of agreements.

Recent interstate agreements relating to groundwater

In December 2002, an agreement was reached concerning groundwater affecting the 1943 interstate compact of the Republican River. This agreement, reached between Kansas, Nebraska and Colorado, covered groundwater issues after Kansas filed suit alleging Nebraska had overused their 1943 allocation of the Republican River compact after allowing thousands of irrigation wells to be drilled and used. A comprehensive groundwater model jointly developed between Kansas, Nebraska and the federal government will be used to determine groundwater usage. This agreement is one of the first to address ground and surface water, demonstrating the need for comprehensive technical data, such as modeling, on which to base decisions.

Review of American Society of Civil Engineers publication on water agreements

The Society recently published a book entitled “Model Water Sharing Agreements for the 21st Century.” The book describes three different types of processes to reach water agreements. The book uses a commentary and annotated agreement language process to help develop water agreements. The guidance from the ASCE publication would be helpful for Washington when the state is ready to scope proposed agreement structures and benefits of one method versus another. Regardless of the model that might be chosen to negotiate an agreement, the book cautions the need for comprehensive water resources assessment. The assessment must consider surface and groundwater to develop a conceptual model of the basin to define resources available. This concept of comprehensive technical data is consistent with other experts on water agreements.

Summary of the review of interstate water agreements and technical literature

Ecology did not do an exhaustive review of all interstate water agreements. The department’s review of agreement processes and other state agreements focused on what could be obtained through an Internet search, recent publications and conference data. Information that was found is summarized below:

- Generally, agreements to allocate water between states have established federal processes that Washington has little authority to change.
- Agreements and compacts need comprehensive, unbiased technical data to base allocation decisions and to develop apportionment formulas.

- Most existing agreements and compacts only look at surface water and rarely mention groundwater.
- There is some recent agreement data from Kansas and Nebraska that may be useful for future agreements that Washington may undertake.
- Agreements must have political support and authority to negotiate compacts together with staff and technical support to be successful.
- There are other processes that exist to allocate water between states and have not been ratified by Congress. These agreements are cooperative and rely of the goodwill of the states to be successful.
- There are quasi-federal processes that exist to manage water between states. One such local example is the Northwest Power Planning Council.
- Examples of agreement language and process outlined within the American Society of Civil Engineer's publication on model water-sharing agreements could be helpful for Washington if we decide to negotiate an agreement.

Recommendations

The following recommendations are made as a result of review of agreements in other states and consultation with the state of Idaho on the Spokane-Rathdrum Prairie Aquifer:

- There does not appear to be a need at this time to negotiate any additional agreements with bordering states and Canada on allocation of trans-boundary waters. Preliminary discussions will take place regarding renewal of the operating order (due to expire in 2012) through the Joint Commission on Lake Osoyoos. Current administrative agreements between bordering states and Canada are working and mostly provide coordination and sharing of information.
- An interstate agreement on the Spokane-Rathdrum Prairie Aquifer is premature at this time due to the need for a comprehensive study of the aquifer, especially the Idaho portion.
- Upon completion of the technical study of the Spokane-Rathdrum Prairie Aquifer, the states of Idaho and Washington would have the technical data to begin interstate negotiations of the bi-state aquifer. The study is expected to take up to three years to complete.
- Federal funding of the Spokane-Rathdrum Prairie Aquifer has been proposed by Congress and may come available in 2003. Washington will be expected to come up with matching money and in-kind services. Previous figures for the matching funds were estimated at \$80,000. Ecology will make a budget request to the legislature for the \$80,000 match for the comprehensive aquifer study.

Appendices 1 - 5

Appendix 6:

**Cross State Water Agreements, Interstate Compacts, and
Transboundary Agreements of the Western United States**

19 pages

and

Appendix 7:

**Coordination Mechanisms for the Control of Interstate Water
Resources: A synthesis and review of the Literature**

Prepared by Douglas S Kenney, PhD

36 pages

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BEFORE THE DEPARTMENT OF ECOLOGY
OF THE
STATE OF WASHINGTON

AND THE

DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE)
COORDINATED MANAGEMENT)
OF THE PULLMAN-MOSCOW)
GROUND WATER AQUIFER)

INTERAGENCY AGREEMENT

WHEREAS the ground water resource located in the Palouse River/Hangman Creek basins of Latah County Idaho and Whitman County Washington is an important water source for citizens of both Washington and Idaho and

WHEREAS the Pullman Moscow Water Resources Committee (PMWRC) made up of representatives from Whitman County Latah County City of Pullman City of Moscow Washington State University and University of Idaho has been established in recognition of local concerns for the safety and reliability of the ground water resource because of continuing declines in ground water levels in the Pullman-Moscow aquifer and

WHEREAS computer-simulated modeling studies sponsored by the PMWRC indicate that the ground water level declines will continue if annual rate of withdrawal from the aquifer increases and

WHEREAS applications filed in both Washington and Idaho in recent years for large withdrawals of water from the aquifer indicate the potential exists for substantially increased ground water withdrawals and an associated decline in ground water pumping levels and

WHEREAS the PMWRC has adopted a coordinated management plan which sets goals for improved management of the Pullman Moscow aquifer and action plans aimed at achieving these goals have been adopted by each of the entities belonging to the PMWRC and

WHEREAS the Director of the Department of Ecology of the State of Washington is charged with the administration of ground water resources to maintain a safe sustained yield (Revised Code of Washington 90 44 130) and is authorized by Washington law to represent the state in matters pertaining to interstate water rights and water development and

IT IS FURTHER UNDERSTOOD that this agreement is effective upon signature by both directors and accomplishment of such filing notice or approval requirements as may be necessary This agreement shall remain in effect until terminated by written notice by either party

DATE Apr 18, 1992

For Chuck Clarke
FOR CHUCK CLARKE
DIRECTOR
WASHINGTON DEPARTMENT OF ECOLOGY

DATE April 20, 1992

R Keith Higginson
R KEITH HIGGINSON
DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

MEMORANDUM OF AGREEMENT BETWEEN THE OREGON
WATERMASTER AND THE WASHINGTON WATERMASTER FOR
DELIVERY OF WATER FROM OREGON TO WASHINGTON
IN THE WALLA WALLA BASIN

There are several streams that flow from Oregon to Washington in the Walla Walla River Basin. There is a need for a procedure for regulating these waters across the state line.

A stipulation before the Supreme Court Of The United States, Original No. 17 In Equity was signed by the States of Washington and Oregon in October 1933 (attached). This document identifies which inter-state streams will be regulated.

This memorandum of agreement (agreement) will outline procedures for delivering water from Oregon to Washington for certain inter-state streams. The inter-state streams to be regulated are Mud Creek and its tributaries, East Branch of Mud Creek, Middle Branch of Mud Creek, Pine Creek and its tributaries, Schwartz Spring Branch and streams. This agreement is to be followed by the Washington Watermaster and the Oregon Watermaster when regulating those inter-state streams.

When a Washington resident is short of water on any of the inter-state streams identified in the above document, they should first contact the Washington Watermaster about the deficiency. When the Oregon Watermaster receives a complaint, for lack of water, from the Washington Watermaster, the Oregon Watermaster will request the following criteria to be completed, by the Washington Watermaster, prior to regulating Oregon's junior water rights in favor of Washington's senior water rights.

The Washington Watermaster will

- 1 Investigate the complaint and determine that the Washington resident does have a valid Washington water right and that its limits in quantity and use are not exceeded.

- 2 Identify if there is a deficiency in the supply of water at the point of diversion for the proposed use.

- 3 Investigate upstream water users in the State of Washington for over appropriation or illegal use without benefit of a water right. If so, regulate those users.

- 4 Regulate in Washington any junior water users upstream from the complaint and ensure the water is used in accordance with the water right and used beneficially without waste.

- 5 Monitor the water use of the complainant to insure the water is used in accordance with the water right and used beneficially without waste.

Memorandum of Agreement
Washington Watermaster and Oregon Watermaster
Page 2 of 2
April 28, 1992

6 Contact the Oregon Watermaster in regards to the validity of the complaint, and the findings of your investigation and regulations

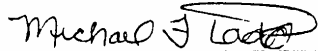
7 Notify the Oregon Watermaster of any shut down in the use of the water or no further demand, so the Oregon Watermaster can turn their junior water users back on

Based on a request to regulate certain inter-state streams, and after the above requirements are met, the Oregon Watermaster will:

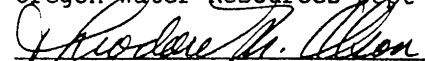
1 Investigate upstream users in the State of Oregon for over appropriation or illegal use without benefit of a water right. If so, regulate those users.

2 Regulate its junior water users and deliver the water to the state line between Oregon and Washington

3 The Oregon Watermaster will only regulate the waters of the streams stipulated in the Supreme Court agreement identified above. Any supplemental water from the Walla Walla River in Oregon, that is diverted to the Oregon users on the subject stream, will not be regulated pursuant to this Memorandum Of Agreement


MICHAEL F. LADD
North Central Regional Manager
Oregon Water Resources Dept

4-28-92
Date


THEODORE M. OLSON
Section Supervisor
Eastern Regional Office
Water Resources Program
Washington Department of Ecology

5/1/92
Date

Spokane Valley - Rathdrum Prairie Aquifer Round-Table Discussion

June 20, 2002

Agenda

*Shaping the Future of the Spokane / Rathdrum Prairie Aquifer
A Round-Table Discussion to Share Perspectives & Ideas*

Welcome and Overview.

- 9 00 am Welcome, Background, and Overview from Planning Process Initiator Representatives
- Jeff Selle, Spokane Area Regional Chamber
 - Neil Beaver, The Lands Council
- 9 20 am Overview of Today's Agenda
- Emmett Fiske, Facilitator
 - Sarah Hubbard-Gray, Facilitator

Our Shared Water

- 9 30 am What We Know and Don't Know About the Aquifer
- Ken Lustig, Panhandle Health District
 - Stan Miller, Spokane County Water Quality Program
 - John Covert, Washington Department of Ecology
 - Brian Painter, Idaho Department of Environmental Quality
- 10 30 am Legislative Update / Funding for the Proposed Study
- Senator Larry Craig, Idaho
- 10 50 am Break
- 11 05 am Similarities and Differences between Idaho and Washington Water Law
- George Schlender, Washington Department of Ecology
 - Dave Tuthill, Idaho Department of Water Resources
- 11 35 am Components of a Regional Hydrologic Study
- Christian Petrich, Idaho Water Resources Research Institute

- 11 50 am Transitioning to the Afternoon Session
- Questions and process for small group discussion
 - 1 What questions should the proposed comprehensive, bi-state study answer?
 - 2 What are the best ways to keep stakeholders meaningfully informed and involved during the study phase?
 - Questions and process for providing input at comment stations
 - 3 Who needs to be included in further efforts involving the Spokane / Rathdrum Prairie Aquifer (who are the affected stakeholders)?
 - 4 How can the broader public be effectively informed about the proposed comprehensive, bi-state study?
- Emmett Fiske, Facilitator
 - Sarah Hubbard-Gray, Facilitator
- 12 10 pm Lunch
- Senator Patty Murray, Washington, will provide a legislative update via phone at approximately 12 15 pm

Participant Perspectives.

- 1 00 pm Small Group Discussions / Question #1 (Round 1)
- 1 45 pm Small Group Discussions / Question #2 (Round 2)
- 2 25 pm Comment Stations / Questions #3 and #4 (Round 3)
- 3 05 pm Break
- 3 20 pm Sharing of Participant Perspectives (Break-Out Presentations)
- 3 40 pm Moving from Today into the Future (Next Steps)
- 4 00 pm Provide Written Evaluations of Today's Session
- 4 10 pm Adjourn

**INTERAGENCY MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

AND

THE PROVINCE OF BRITISH COLUMBIA
MINISTRY OF ENVIRONMENT, LANDS AND PARKS
KOOTENAY REGION**

This two party agreement is made and entered into by and among the Department of Ecology, hereinafter referred to as "Ecology" and the Ministry of Environment, Lands and Parks hereinafter referred to as "BC Environment"

Whereas, the Environmental Cooperation Agreement of May 7, 1992 between the Province of British Columbia and the State of Washington, mandated coordinated action and information sharing between the State and the Province on environmental matters of mutual concern and the establishment of Task Forces to address issues of major environmental significance

Whereas, environmental pollutants in the international boundary portion of the Columbia River drainage can travel across the border and may be a source of concern to the parties to this MOU and area residents,

Whereas, Ecology and B C Environment are parties to a formal Memorandum of Understanding regarding information sharing on air emission sources (April 14, 1994)

Whereas, the Lake Roosevelt Water Quality Council which provided a forum for Ecology and B C Environment to cooperate on water quality issues related to Lake Roosevelt and the Upper [Lower] Columbia River ceased operation in September, 1995 as a planning and coordinating body

Whereas, at the June 9, 1995 meeting of the British Columbia/Washington Environmental Cooperation Council, B C Environment and Ecology managers were directed to prepare a Memorandum of Understanding to assure continued coordination and cooperation relative to major environmental issues within the international portion of the Columbia River drainage

Whereas, the regulatory/oversight responsibilities over waste discharges rests primarily with Ecology and B C Environment as the regulatory agencies of the State and the Province

Therefore, B C Environment and Ecology hereby enter into this Memorandum of Understanding, hereafter called the MOU

This MOU incorporates by reference the four party MOU on Air Quality between the State of Washington Department of Ecology, The State of Washington Northwest Air Pollution Authority, The Province of British Columbia Ministry of Environment, Lands and Parks, and The Greater Vancouver Regional District, as it applies to this portion of the Columbia River drainage

B C ENVIRONMENT AND ECOLOGY, MUTUALLY AGREE TO

- in accordance with section III a) of attachment 1, provide timely prior notification of proposed discharges to the water or land which have significant potential for cross boundary water quality impacts
- in accordance with section III b) of attachment 1, provide timely prior notification of proposed significant consumptive water use
- in accordance with section III c) of attachment 1, provide an opportunity for comment on planning activities that may have trans-boundary impacts
- in accordance with section III d) of attachment 1 provide timely notification of significant spills to the Columbia River including tributary streams

- in accordance with section III e) of attachment 1, share air and water quality monitoring data
- in accordance with section III f) of attachment 1, provide the opportunity for trans-boundary public comment on proposals under consideration by the agency with jurisdiction
- in accordance with section III f) of attachment 1, jointly facilitate public information sharing meeting upon mutual agreement of need
- specify appropriate contacts within each agency to facilitate timely sharing of information

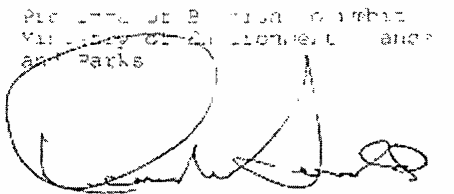
Statutory Powers

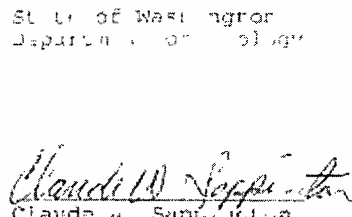
Nothing in this Memorandum of Understanding shall be construed as affecting or limiting the legislative or statutory powers of the signatories to this memorandum

Termination

The period of performance of this MOU shall commence on the date it is signed by both parties and remains in effect until terminated by either or both of the parties by way of 30 days prior written notification

IN WITNESS THEREOF, the parties execute this agreement

Department of Ecology
 Washington Department of Ecology
 and Parks

 Dennis G. McDonald
 Regional Director
 Eastern Region

State of Washington
 Department of Ecology

 Claude W. Suppington
 Regional Director
 Eastern Region

ATTACHMENT 1
SCOPE OF WORK
PRIOR CONSULTATION AND INFORMATION SHARING
ON
ENVIRONMENTAL ISSUES

I Coordination and Cooperation

Air and water quality are issues of mutual concern to both parties in this agreement. Because point and nonpoint sources of contamination on one side of the international boundary have the potential to impact environmental quality on the other side, it is imperative that regulatory agencies in both Washington and British Columbia coordinate their regulatory actions and cooperate in sharing relevant environmental quality information necessary to ensure environmental protection as provided by both jurisdictions. To this end, this MOU is entered into by the agencies on both sides of the border with the most direct regulatory impact on cross-boundary environmental quality issues. These are the British Columbia Ministry of Environment, Lands and Parks and Washington State Department of Ecology. This MOU addresses the roles and responsibilities of these agencies in consulting with each other early in the application process concerning significant environmental permits, licenses, monitoring and planning activities.

II Geographic Area of the Scope of Work

The area of work encompasses the international portion of the Columbia River drainage defined as the main stem Columbia River between Grand Coulee Dam and

Hugh Keenleyside Dam and the Pend Oreille River within Washington State and British Columbia

III Elements of Prior Consultation and Information Sharing

There shall be prior consultation and information sharing concerning environmental activities between B C Environment, Kootenay Regional Office (Nelson) and Ecology, Eastern Regional Office (Spokane) as follows

- a) Wastewater Discharges/permits – At least thirty (30) days prior to the issuance, re-issuance of a permit, or significant modification (significant being defined in accordance with normal business practices followed by the regulating agency) of an existing waste discharge permit that may affect the international portion of the Columbia River drainage, the parties will submit a complete application package to each other for review and comment. The permitting agency shall provide a copy of the final permit and upon request, the Responsiveness Summary (technical report) of the reviewing agency. Discharges of effluent to ground that may adversely affect the cross boundary surface or ground water quality shall also be included in the review and consultation process.
- b) Consumptive Use of Water – at least thirty (30) days prior to the issuance of significant (in excess of 10 cfs) permanent consumptive water rights that could effect cross border stream flow, the permitting agency shall provide application information to the reviewing agency for comment. The final decision will be copied to the reviewing agency.
- c) Water Drainage Basin Planning – From time to time, water drainage basin planning activities may be contemplated for a basin located within the geographic

- area of this MOU. If in the opinion of the planning agency there will be cross-boundary impacts, the jurisdiction affected by the planning activities or decisions will be offered the opportunity to review and participate in the planning process.
- d) Emergency Spill Response – In addition to formal notification procedures, Ecology and B C Environment will continue informal early notification of spills to the international portion of the Columbia River drainage.
 - e) Data Exchange – Upon request, all available environmental data from the international portion of the Columbia River drainage within the possession of either party to this agreement will be shared between the agencies.
 - f) Public Involvement – Either agency may have the lead responsibility for approving environmentally significant projects or activities that have the potential to cause cross border impacts. Upon the request of either B C Environment or Ecology, the public within the geographic area of this agreement, will be given the opportunity to review and comment in writing or verbally on a proposal under consideration by the agency with jurisdiction. B C Environment and Ecology agree to jointly facilitate public information sharing meetings as the need arises. The location of these meetings will alternate between British Columbia and Washington State.

APPENDIX to April 12, 1996
BRITISH COLUMBIA/WASHINGTON
MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF AGREEMENT
Related to
REFERRAL OF WATER RIGHT APPLICATIONS

Between the
State of Washington
as represented by the Department of Ecology,
herein called "Ecology"

and the

Province of British Columbia
as represented by the Minister of Environment, Lands and Parks,
herein called "the Ministry"

October 10 1996

RECITALS

WHEREAS, the Environmental Cooperation Agreement of May 7, 1992, between the Province of British Columbia and the State of Washington, proposed consultation and information sharing between the State and the Province on environmental matters of mutual concern, including water resource management issues such as water resource allocation,

WHEREAS, the Memorandum of Understanding of April 12, 1996 between Ecology and the Ministry provides for the development of subject-specific Memoranda as Appendices to the Memorandum of Understanding

WHEREAS, jurisdiction over water resource allocation of waters of the Province and the State rests, respectively, with the Province and the State, subject to the exercise of any existing applicable aboriginal and treaty rights, in the case of the Province with First Nations as recognized and affirmed in Section 35 of the Canadian Constitution Act of 1982, and in the case of the State with Native Tribes as recognized by the Congress of the United States and by the State of Washington,

WHEREAS, in the exercise of that jurisdiction particular regulatory schemes have been put in place in the Province and the State, and these schemes are administered by provincial and state agencies, the Ministry and Ecology respectively,

WHEREAS, a Memorandum of Agreement was considered to be the most effective means to provide for consultation and information sharing between the Ministry and Ecology on water resource allocation by officials of those agencies, where such allocation has the potential for significantly impacting water quantity across the border

THEREFORE, the Ministry and Ecology enter into this Memorandum of Agreement, hereafter called the MOA

IT IS THE PURPOSE OF THIS MOA TO

- 1) Define the respective roles and responsibilities of the Ministry and Ecology to provide for timely prior consultation on water quantity allocation permits, and
- 2) Specify procedures, schedules, and appropriate contacts within each agency to facilitate the timely sharing of the above information

IT IS MUTUALLY AGREED THAT

1 Statement of Work

1 01 The Ministry and Ecology agree, in order to provide for timely consultation between them prior to water resource allocation by officials of those agencies where, in the judgement of the administrating agency, such allocation may have the potential for significantly impacting water quantity on the other side of the border, to

(a) provide information to the other party in accordance with the Scope of Work, which is attached to this MOA and forms part of it, and

(b) consult with the other party

on any licence or permit application for water quantity allocation which if granted, could potentially significantly impact water quantity on the other side of the border

2 Term

2 01 This MOA will take effect commencing on the date this MOA is signed by both parties and will remain in effect for a period of three years, when it shall be subject to review and renegotiation, unless it is terminated earlier by either of the parties

3 Termination

3 01 Either party may terminate this MOA by giving 30 days written notice of termination to the other party

4 General

4 01 This MOA is not intended to constitute a contractually binding relationship between the parties

IN WITNESS THEREOF, the parties execute this agreement

*A duly authorized representative of the
Minister of Environment Lands and Parks
on behalf of Her Majesty the Queen
in Right of the Province of British Columbia*

*A duly authorized representative of the
Director of the Department of Ecology
for the State of Washington*

Name Jim McCracken

Title Regional Director

Date October 15, 1996

Name Michael Reustler

Title Regional Director

Date October 11, 1996

SCOPE OF WORK

PRIOR CONSULTATION AND INFORMATION SHARING REGARDING WATER RIGHTS ALLOCATION

I Coordination and Cooperation

Water quantity allocation is a cross-border issue. Because water resource development on either side of the border can have a significant impact on water availability on the other side, it is imperative that the Ministry and Ecology

(a) coordinate reviews to facilitate decision-making on applications involving water rights allocation, where the water allocation applied for has the potential for significantly impacting water quantity across the border, and

(b) cooperate in sharing relevant water quantity information necessary to provide management of those water resources

II Elements of Consultation

In addition to the referral procedures normally followed, Ecology's Shorelands and Water Resources Program, Northwest Regional Office Section, will send all surface water, ground water, and reservoir applications for permit and applications for change of water right to the Ministry when the point of withdrawal, point of diversion, or place of use specified in the application is within or on the exterior boundaries of the Abbotsford/Sumas Aquifer as outlined in the attached plan (1:82,500 scale). Ecology will provide the Ministry a copy of the application form and a copy of the appropriate USGS quadrangle sheet or Metsker map, indicating the location of major project features such as points of diversion, nature of the works proposed, and other information normally submitted with the application. All applications will be sent to the Regional Water Manager, Lower Mainland Regional Headquarters, Ministry of Environment, Lands & Parks.

In addition to the referral procedures normally followed, the Ministry will send to Ecology all surface water licence applications and water licence amendment applications when the point of withdrawal, point of diversion, or place of use identified in the application is within or on the exterior boundaries of the Abbotsford/Sumas Aquifer as outlined in the attached plan (1:82,500 scale). The Ministry will provide Ecology a copy of the application form and a copy of the appropriate NTS, BCGS or cadastral map, indicating the location of major project features such as points of diversion, nature of the works proposed, and other information normally submitted with the application. All applications will be sent to the Supervisor, Shorelands and Water Resources Program, Northwest Regional Office, Department of Ecology.

Applications which meet the requirements identified above will be transmitted by the Ministry or Ecology to its counterpart at the same time that notice for comment is provided to other interested parties. Upon receipt of the application, the Ministry and Ecology will have 30 days for review and comment. If necessary, the Ministry and Ecology may request additional time for review and comment on any application.

Comments from the Ministry and Ecology should be substantive in nature, i.e., they should relate specifically to impairment of the aquifer's safe sustaining yield, impairment of existing rights, or to fish and wildlife biology or habitat impacts. Current information, based on a field investigation, is preferred. Projected effects should be quantified to the extent possible. If either agency's staff does not fully understand the reviewer's comments, he or she should contact the reviewing agency for clarification. When findings significantly deviate from the substantive comments provided by the reviewing agency, a copy of the findings will be provided to the reviewing agency.

III Information Sharing

Subject to applicable public disclosure, freedom of information, and protection of privacy laws, the Ministry and Ecology commit to freely sharing and exchanging information on water licences/permits and water licence/permit applications under consideration.

Subject to applicable public disclosure, freedom of information, and protection of privacy laws, the Ministry and Ecology commit to freely sharing and exchanging information on regional studies pertaining to water availability and development of water resources within or on the boundaries of the aquifer.

